

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

October 26, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 15, 2006

Case Number: TSO-0357

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be granted. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's request for an access authorization should be granted.

I. Background

The individual is an applicant for a DOE security clearance. During a background investigation, a Local Security Office (LSO) learned that the individual had been arrested four times for alcohol-related offenses. This information caused the LSO to conduct a Personnel Security Interview (PSI) with the individual in April 2005 to discuss the individual's arrests and his use of alcohol. During the PSI, the individual revealed a fifth alcohol-related arrest to the LSO. Soon thereafter, the LSO referred the individual to a licensed clinical psychologist (DOE psychologist) for an examination. The DOE psychologist examined the individual in August 2005, and concluded that the individual suffers from a mental condition, Alcohol Abuse, in Sustained Full Remission, which may cause a defect in the individual's judgment or reliability. It was the opinion of the DOE psychologist at the time of the 2005 examination that the individual was neither rehabilitated nor reformed from his Alcohol Abuse.

In November 2005, the LSO sent the individual a letter (Notification Letter) advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. The LSO also advised the individual that the

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j). (hereinafter referred to as Criteria H and J respectively).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. On February 17, 2006, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. Subsequently, I convened a hearing in the case. At the hearing, six witnesses testified. The LSO called one witness and the individual presented his own testimony and that of four witnesses. In addition to the testimonial evidence, the LSO submitted nine exhibits into the record; the individual tendered three exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after

² Criterion H relates to information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j).

consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concern at Issue

As previously noted, the LSO cites two criteria as the bases for suspending the individual's security clearance, Criteria J and H. To support Criterion H, the LSO relies on the DOE psychologist's opinion that the individual suffers from Alcohol Abuse, in Full Sustained Remission, a mental condition, which may cause a defect in the individual's judgment or reliability. The LSO also relies on the DOE psychologist's opinion to support Criterion J in the case, as well as the individual's five alcohol-related arrests, one in 1987, two in 1990, one in 1999 and one in 2003.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H, and his alcohol use under Criterion J. First, a mental condition such as Alcohol Abuse can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

The individual has a history of excessive alcohol consumption as exemplified by the following five alcohol-related arrests in a 16-year period. At age 20, the individual was arrested in 1987 and charged with being drunk in public (DIP). Exhibit (Ex.) 2. Three years later, in 1990, the individual was arrested twice and charged with Driving Under the Influence (DUI), once in June 1990 and the second time in September 1990. Ex. 9 at 7, 12. In 1999, the individual was arrested a fourth time and charged with DIP. Ex. 2. The individual's fifth and most recent arrest occurred in March 2003 when he was arrested and charged with DUI. Ex. 9 at 54. The individual's blood alcohol content (BAC) at the time of his 2003 arrest was .15. *Id.* As the result of the 2003 DUI, the individual was placed on probation until April 2006 and ordered to attend a three-month DUI program. Ex. 5 at 4.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been

guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).³ After due deliberation, I have determined that the individual's access authorization should be granted. I find that granting the individual a DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

Alcohol Abuse

In his report, the DOE psychologist stated that the individual met the criteria for Alcohol Abuse during the period 1987 to 2003. Ex. 9 at 4. At the time that the DOE psychologist evaluated the individual in 2005, however, the individual's pattern of social drinking did not meet the criteria for Alcohol Abuse. *Id.* The DOE psychologist explained that in the period following the individual's 2003 DUI, there was no evidence that the individual had (1) failed to fulfill his obligations at work, school or home, (2) used alcohol on a recurrent basis in situations in which it was physically hazardous, (3) had recurrent alcohol-related legal problems; or (4) continued using alcohol despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol. *Id.* For all these reasons, the DOE psychologist determined in 2005 that the individual suffered from Alcohol Abuse in Full Sustained Remission. The DOE psychologist did not believe in 2005 that the individual was rehabilitated or reformed from his Alcohol Abuse for two reasons: (1) the individual was still on probation for his 2003 DUI and (2) he had not completed a professional alcoholism rehabilitation program. *Id.* The DOE psychologist acknowledged that the individual had abstained from alcohol for a one-year period following his 2003 DUI and had made changes to his drinking behavior after his period of sobriety. *Id.* To show adequate evidence of rehabilitation or reformation, the DOE psychologist recommended that the individual satisfactorily complete an outpatient treatment program of one to three months duration to enhance his knowledge of alcohol addiction, triggers, and tools that he can employ to prevent relapse once his probation has ended. *Id.*

The individual admitted at the hearing that he abused alcohol until he received his 2003 DUI. Transcript of Hearing (Tr.) at 135. Since there is no dispute about the diagnosis in this case, the central issue before me is whether the individual is rehabilitated or reformed from his past Alcohol Abuse.

Rehabilitation and Reformation

The individual testified convincingly that he abstained entirely from consuming alcohol after his 2003 DUI. The individual's best friend who socializes frequently with him confirmed this fact at the hearing. Tr. at 90. The individual explained that after his 2003

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

DUI he changed his entire attitude towards drinking. *Id.* at 102. He related that before his 2003 DUI, he would seek parties where everyone was getting drunk because “he thought it was cool to get smashed.” *Id.* at 101. After his 2003 DUI, he decided to sever his ties with those who drank alcohol to excess. *Id.* at 102. He also began dating his girlfriend in 2005, a woman whom he plans to marry. *Id.* at 44. The individual’s girlfriend testified that the individual does not want the party lifestyle anymore. *Id.* at 36. She related that the individual is home all the time now. *Id.* at 31. According to one of the individual’s co-workers, the individual’s relationship with his girlfriend strengthened his resolve to drink responsibly. *Id.* at 75. The co-worker remarked at the hearing, “Now I can’t even get him to have a beer with me.” *Id.* That same co-worker testified that he allows the individual to take his two boys snowboarding, an activity that he would never let the individual do with his boys if he thought that the individual might consume alcohol. *Id.* at 75. The individual’s best friend testified that the individual is “older and wiser” now, noting that the individual has told him that he no longer has the desire to drink to excess. *Id.* at 89. The individual testified that he now drinks alcohol responsibly, relating that he drinks a glass of wine with dinner two to three times per month. *Id.* at 103. He added that he heeded the DOE psychologist’s advice and began attending Alcoholics Anonymous (AA) to keep his “mind focused in the right direction.” *Id.* at 40. He testified that he plans to attend AA meetings indefinitely. *Id.* at 124. The individual added that he has “matured mentally” since his 2003 DUI and he intends never to drink to excess again. *Id.* at 43, 114, 135. The individual ended by stating that his close friends, girlfriend and sister provide a support system to ensure that he will not return to drinking excessively. *Id.* at 121.

The individual’s girlfriend testified that she has known the individual for six years and dated him for one year. *Id.* at 20. She related that her ex-husband was a drug addict and an alcoholic. *Id.* at 28. When she was married to her ex-husband, the girlfriend attended classes on co-dependency and many other substance abuse programs in an effort to help her husband at the time recover from his substance problems. *Id.* at 29. She opined that because she was in a destructive relationship with her ex-husband, she is attuned to the behavioral patterns (e.g. sleeping, acting strangely, not going to work, staying out late, partying, etc.) of persons who have substance problems. *Id.* at 27-18. The girlfriend stated that had she seen any signs of substance abuse in the individual, she would not have continued dating him. *Id.* at 28. She then related that prior to entering into a dating relationship with the individual she had dated another person who tried to hide from her his alcohol use. The girlfriend stated that she was able to detect this other person’s alcohol problems because of her experience with her ex-husband. *Id.* at 38-39. The girlfriend observed that her ex-husband had friends who suffered from the same problems as he. *Id.* at 30. She believes that persons who are arrested for DUI will continue to get DUIs unless they “straighten up.” *Id.* With regard to the individual’s participation in AA, she believes that the AA meetings reinforce his commitment to drink responsibly in the future. *Id.* at 42.

The DOE psychologist testified a second time after hearing the testimony of all the witnesses in the case. According to the DOE psychologist, the individual is adequately rehabilitated from his Alcohol Abuse. He pointed to the following facts that convinced him of the individual’s rehabilitation: (1) the individual completed his probation in April

2006; (2) the individual provided evidence that he completed a rehabilitation program following his 2003 DUI; (3) the individual has the support of his friends, fiancée and extended family; (4) the individual is using AA to keep him focused on limiting his consumption of alcohol; and (5) the individual is controlling his drinking to a very minimum level. *Id.* at 146-147.

Hearing Officer Evaluation of Evidence

The evidence in this case convinces me that the individual has mitigated the Criteria H and J security concerns before me. The DOE psychologist's opinion that the individual is rehabilitated from his Alcohol Abuse allays the Criterion H concerns surrounding the state of the individual's mental health. As for Criterion J, it is not only the DOE psychologist's opinion regarding the individual's rehabilitation in this case but my own common sense determination that the individual presented compelling evidence that he has reformed his behavior that allows me to find that the individual has mitigated Criterion J. Specifically, I am convinced from the individual's testimony, and that of his girlfriend, co-worker and best friend that the individual has changed his attitude towards drinking, stopped associating with persons who drink excessively, and ceased circulating on the "party-scene." I also found that the individual's girlfriend was uniquely situated to evaluate the individual's drinking habits in light of her past experience with her ex-husband. The girlfriend provided probative evidence that she is a source of strength and support for the individual's continuing efforts to drink responsibly in the future. Furthermore, the individual provided corroborating evidence to demonstrate that he abstained from alcohol for a one year period following his 2003 DUI and has established a two-year pattern of drinking responsibly. The individual acknowledged at the hearing that his alcohol abuse has caused serious problems in his life. He also testified credibly that he never intends to abuse alcohol again. Finally, the individual's commitment to remain in AA to assist him in remaining vigilant about his responsible drinking is a positive factor in his favor. In the end, the individual has demonstrated over the last three years that he has changed his lifestyle and modified his behavior in a manner that supports his professed commitment to refrain from drinking alcohol excessively again.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with both criteria at issue. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may

seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: October 26, 2006